

Public

7-30



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

Office of Professional Discipline, 475 Park Avenue South, 2nd Floor, New York, NY 10016-6901
Tel. (212) 951-6400
Fax (212) 951-6420
E-mail: OP4INFO@MAIL.NYSED.GOV

May 22, 2009

Earl M. Kabnick, Physician

Redacted Address

Re: Application for Restoration

Dear Dr. Kabnick:

Enclosed please find the Commissioner's Order regarding Case No. CP-09-01 which is in reference to Calendar No. 21851. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher
Director of Investigations

Redacted Signature

Ariana Miller
Supervisor

DJK/AM/bt

cc: Wilfred T. Friedman, P.C.
Attorneys and Counselors at Law
60 East 42nd Street, Fortieth Floor
New York, New York 10165



The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of EARL M. KABNICK
for restoration of his license to
practice as a physician in the State of
New York.

Case No. CP-09-01

It appearing that the license of EARL M. KABNICK, Redacted Address

, authorizing him to practice as a physician in the State of New York,
was revoked by order of the Administrative Review Board for Professional Medical Conduct
effective August 11, 1994, and he having petitioned the Board of Regents for restoration of said
license, and the Regents having given consideration to said petition and having agreed with and
accepted the recommendations of the Peer Committee and the Committee on the Professions,
including the Terms of Probation recommended by the Committee on the Professions, now,
pursuant to action taken by the Board of Regents on March 17, 2009, it is hereby

136041
ORDERED that the petition for restoration of License No. ~~135046~~, authorizing EARL M.
KABNICK to practice as a physician in the State of New York, is denied, but that the execution
of the order of revocation of said license is stayed, and said EARL M. KABNICK is placed on

probation for a period of five years under specified terms and conditions, at the beginning of which he must complete a preceptorship, mini-residency in radiology or retraining program, and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.



IN WITNESS WHEREOF, I, Richard P. Mills, Commissioner of Education of the State of New York for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this day of May, 2009.

Redacted Signature

~~Commissioner of Education~~

Case No. CP-09-01

It appearing that the license of EARL M. KABNICK, Redacted Address
, authorizing him to practice as a physician in the State of New York,
was revoked by Order of the Administrative Review Board for Professional Medical Conduct
effective August 11, 1994, and he having petitioned the Board of Regents for restoration of said
license, and the Regents having given consideration to said petition and having agreed with and
accepted the recommendations of the Peer Committee and the Committee on the Professions,
including the Terms of Probation recommended by the Committee on the Professions, now,
pursuant to action taken by the Board of Regents on March 17, 2009, it is hereby

VOTED that the petition for restoration of License No. ¹³⁶⁰⁴¹~~135046~~, authorizing EARL M.
KABNICK to practice as a physician in the State of New York, is denied, but that the execution
of the order of revocation of said license is stayed, and said EARL M. KABNICK is placed on
probation for a period of five years under specified terms and conditions, at the beginning of
which he must complete a preceptorship, mini-residency in radiology or retraining program, and
upon successful completion of the probationary period, his license to practice as a physician in
the State of New York shall be fully restored.

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Physician License

Re: Earl M. Kabnick

Attorney: Wilfred T. Friedman, Esq.

Earl M. Kabnick, Redacted Address
petitioned for restoration of his physician license. The chronology of events is as follows:

- 10/06/78 Issued license number ¹³⁶⁰⁴¹~~135046~~ to practice medicine in New York State.
- 03/10/92 Pled guilty to Grand Larceny in the 3rd Degree, a class D felony.
- 08/28/92 Sentenced to 5 years probation with 500 hours of community service and restitution payment of \$75,000.
- 06/17/93 Charged with professional misconduct by the New York State Department of Health.
- 03/14/94 Hearing Committee Determination and Order No. 94-27 by Department of Health imposing a 1 year actual suspension, 1 year stayed suspension, and a \$10,000 fine.
- 04/05/94 Notice for review of Order No. 94-27 served by Dr. Kabnick.
- 07/25/94 Administrative Review Board (ARB) affirmed Hearing Committee's determination of guilt on the charges, but voted to revoke Dr. Kabnick's license to practice medicine.
- 08/11/94 Effective date of New York State license revocation.
- 06/25/96 Appellate Division, Third Department, affirmed ARB decision.
- 11/14/96 New York Court of Appeals affirmed Appellate Division decision.
- 06/03/02 Application for restoration submitted.
- 08/09/05 Peer Committee restoration review hearing.

- 07/01/06 Report and Recommendation of Peer Committee to restore medical license with a 5 year probationary period, to commence only after a completion of a preceptorship, retraining program, or mini-residency in radiology.
- 03/08/07 Committee on the Professions restoration review.
- 02/27/09 Report and Recommendation of the Committee on the Professions.

Disciplinary History. (See attached disciplinary documents.) On April 10, 1991, Dr. Kabnick was indicted on charges of Grand Larceny in the 1st Degree and Offering a False Instrument for Filing in the 1st Degree. On March 10, 1992, he pled guilty to Grand Larceny in the 3rd Degree, a class D felony, admitting that he submitted Medicaid claims which falsely represented that he had provided radiological services in connection with the diagnosis and treatment of Medicaid patients and that, based on those false representations, he was paid approximately \$75,000 to which he was not entitled. He was sentenced to five years probation with 500 hours of community service and required to pay restitution of \$75,000. As a result of the criminal conviction, the New York State Department of Health charged Dr. Kabnick on June 17, 1993, with having committed an act constituting a crime under New York State Law. On March 14, 1994, a Hearing Committee of the State Board of Professional Medical Conduct found Dr. Kabnick guilty of the charge and imposed a one year actual suspension, a one year stayed suspension, and a \$10,000 fine. That decision was reviewed by the Administrative Review Board (ARB) on July 24, 1994, pursuant to a Notice for Review served by Dr. Kabnick. The ARB affirmed the Hearing Committee's determination of guilt on the charges, but voted to revoke Dr. Kabnick's license to practice medicine. The revocation became effective on August 11, 1994.

On June 3, 2002, Dr. Kabnick submitted an application for restoration of his license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Carone, Gitman, Riggins) convened on August 9, 2005. In its report dated July 1, 2006, the Committee unanimously recommended that Dr. Kabnick's application for restoration be granted to the extent that, after completion of a preceptorship, retraining program, or mini-residency in radiology, with said coursework to have the prior written approval of the chairperson of the Peer Committee, the revocation of his license be stayed and he be placed on probation for a period of five years under specified terms and conditions, which included that he not engage in private practice and that his practice be limited to Article 28 facilities as defined by the Public Health Law. The Peer Committee recommended that, upon the successful completion of his probation, his license to practice as a physician in the State of New York be fully restored.

Recommendation of the Committee on the Professions. On March 8, 2007, the Committee on the Professions (COP) (Templeman, Frey, Earle) met with Dr. Kabnick to consider his application for restoration. His attorney, Wilfred T. Friedman, Esq. accompanied him.

The COP asked Dr. Kabnick to explain the events that led to the revocation of his license. He explained that he had been working as a radiologist at Queens Hospital in Queens, New York. He told the Committee that in 1982, he became president of the Medical Staff Association, which was a union at Queens Hospital, and that that position led to an acrimonious relationship between himself and the hospital, which he believes eventually led to his dismissal in 1988. He indicated that he was approached by a man who wanted Dr. Kabnick to work for him, since he was starting a series of radiology centers in the Bronx, Manhattan, and Queens. Dr. Kabnick accepted a position in which he managed one office and was responsible for the reading of ultrasounds in three other offices. He told the COP that the work primarily involved the reading of ultrasounds and that shortly after he first started work, he had a hint that something was wrong when he noticed cases in which the images taken were the same, but listed under different patient names. However, he continued to work at the establishment and was paid \$5.00 for each ultrasound that he read. He explained that several medical residents had also been hired to read ultrasounds and that he would review those ultrasounds, resulting in more ultrasounds being billed to Medicaid. Dr. Kabnick reported that he was making a lot more money at that time and that, although he had become aware that fraudulent practices were likely occurring, he did nothing about it. Medicaid eventually audited his billings, and it was discovered, among other findings, that numerous repeat studies on the same patients had been done. He, and others involved, were indicted in 1991 for Medicaid fraud. He pled guilty to Grand Larceny in the 3rd Degree, and cooperated extensively with prosecutors with respect to the prosecution of the physician who had originally hired him. As a result of his conviction, he was sentenced to five years probation with community service and payment of restitution of \$75,000. Based on the conviction, he was charged with professional misconduct by the Office of Professional Medical Conduct of the New York State Department of Health. He indicated that the Hearing Panel of the State Board of Professional Medical Conduct voted only to suspend his license for two years, with one year of the suspension being stayed, and to impose a fine. However, following an appeal filed by his lawyer, according to Dr. Kabnick without his approval, the Administrative Review Board voted to revoke his license in 1994.

Dr. Kabnick explained that following the loss of his license, he rented to others the radiology office that he'd owned since 1989. Due to financial problems, he sold the office in 2003, but stayed on as an administrator. However, Dr. Kabnick stated that when he found that the business was participating in a practice of buying and selling patient lists, he left that position because he believed the practice to be engaging in professional misconduct. He stated that he would have nothing to do with anything that gave even an appearance of illegality. He told the Committee that he later became an administrator for other radiology offices.

The Committee asked Dr. Kabnick to explain how he had changed since the activity that led to the loss of his license. Dr. Kabnick stated that he had had a religious awakening that took place over a period of time following the loss of his license. He indicated that his awakening was also due, in part, to medical problems he experienced. He was diagnosed with renal cell cancer in 1996, which seriously affected him for about six months. He also had problems with his weight, diabetes, hypertension, and a blood clot in his eye which required numerous surgeries. In order to straighten out his life, he

joined a synagogue and became an active participant, eventually becoming a member of the Board of Trustees. He also began to study the Bible with his rabbi. He believes that those studies have given him a strong foundation in ethics. In addition, Dr. Kabnick stated that he worked with the FBI in 2004 to help them investigate and prosecute physicians who were selling patient referrals. Finally, he reported that he sought psychiatric therapy which he believes has been helpful to him.

When asked to explain why his license should be restored to him at this time, Dr. Kabnick stated that he is very remorseful about his prior actions and would never do anything illegal again. He stated that he had demonstrated his morality by refusing to work with others who were selling patient lists, notwithstanding that his refusal to do so resulted in the loss of his home and his business, and by offering to work with the FBI with regard to such activities by others. He also mentioned his study of ethics, and that he has completed a great deal of instruction regarding billing practices and over 1,000 hours of continuing medical education (CME) courses. He indicated that he is aware of his need for retraining in radiology due to the passage of time and the introduction of new equipment, and believes that he would need a six-month preceptorship to become current.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has a significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept, without question, the arguments presented by the petitioner, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The Committee on the Professions concurs with the conclusions and recommendations of the Peer Committee. We believe that Dr. Kabnick is sincere with respect to his expressions of remorse for his misconduct. In addition, he has demonstrated since the loss of his license, that he has learned from his past experience and developed sufficient understanding and insight to enable him to make better choices when faced with ethical dilemmas. As evidenced in an affidavit and testimony by his rabbi, it appears that his participation in his religious community has provided him with a source of strength and a commitment to act in a responsible manner. His rehabilitation is further demonstrated by his decision to leave the medical practice which he was serving in an administrative capacity when he believed it to be acting unethically by selling patient referrals and by the assistance he provided to prosecuting authorities in investigating such practices, both at the time of his original conviction and subsequently when he became concerned about similar activities in a practice in which

he was doing administrative work. However, we are concerned, as was the Peer Committee, with the extent of Dr. Kabnick's re-education. Although he has submitted evidence of hundreds of hours of continuing medical education in his field of radiology and indicated in his application that he has completed approximately 50 sessions of instruction in billing, we note that it has been 14 years since he last practiced medicine. Accordingly, we agree with the Peer Committee that additional retraining is required before he can return to the practice of radiology. We also note positively that Dr. Kabnick recognized in his meeting with the COP that such retraining is a necessary component of his return to practice.

Therefore, after a careful review of the record and having met with Dr. Kabnick, the Committee on the Professions votes unanimously to concur with the recommendations of the Peer Committee that the Order of Revocation of Dr. Kabnick's license to practice as a physician in the State of New York be stayed and that he be required to successfully complete a preceptorship, mini-residency in radiology, or retraining program. However, whereas the Peer Committee recommended that such work receive the prior written approval of the chairperson of the Peer Committee or, if he is not available, the prior written approval of the Executive Secretary of the State Board for Medicine, we find that it would be more appropriate that such preceptorship, mini-residency in radiology, or retraining program be subject instead to the prior written approval of the Director of the Office of Professional Medical Conduct, as it is that office that will be responsible for overseeing his probation. Additionally, rather than begin Dr. Kabnick's period of probation upon successful completion of such program, we find that his probation should begin immediately upon the service of the order implementing the decision of the Board of Regents, should it adopt this recommendation, to enable him to participate in any hands-on practice that may be included in the program.

In accordance with section 24.7(a)(2)(i) of the Rules of the Board of Regents, a copy of the COP's draft report was sent to the applicant. In his response dated January 5, 2009, the applicant requested that a term of probation recommended in the draft report requiring him to work in a Public Health Law Article 28 facility be deleted because he is prohibited from participation in the Medicaid and Medicare programs due to his criminal conviction and, based on that prohibition, no Article 28 facility will hire him. In lieu of the Article 28 requirement, he suggested that he be barred from being involved in billing. The COP recognizes that it may well be impossible for the applicant to find a position in an Article 28 facility, but the Committee continues to believe that, during his probation, he should work under supervision in a group setting. Accordingly, it has modified its recommended terms of probation to enable the applicant to work in a group setting previously approved in writing by the Director of the Office of Professional Medical Conduct, if it is not possible for him to find a position in an Article 28 facility. In addition, he must be under the supervision of a board certified physician in the type of medicine that the applicant is practicing, said supervising physician to be selected by the applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct.

In a February 10, 2009 response to the revised draft report, the applicant asked that the term of probation requiring him to attempt to find a placement in an Article 28 facility before an alternative supervision arrangement may be approved be removed from the report. In support of this request, he again cited the difficulty he would have

finding employment in an Article 28 facility due to his exclusion from the Medicaid and Medicare programs. Given the protections built into the probationary terms, including his supervision by an appropriately board certified physician, the approval his practice setting and supervisor by the Director of the Office of Professional Medical Conduct, and the oversight of his probationary practice by that office, the COP is recommending that the probationary terms be modified to eliminate the requirement that Dr. Kabnick be unable to find employment in an Article 28 facility prior to the approval of an alternative practice supervision arrangement.

Accordingly, the COP recommends that Dr. Kabnick be placed on probation, under the terms specified in the Terms of Probation of the Committee on the Professions, attached hereto as Exhibit A, for a period of five years, at the beginning of which he must complete a preceptorship, mini-residency in radiology, or retraining program, as described in the Terms of Probation. Until the Director of the Office of Professional Medical Conduct determines that he has satisfactorily completed the preceptorship, mini-residency in radiology, or retraining program, Dr. Kabnick may practice medicine only in accordance with the parameters established and approved for such preceptorship, mini-residency in radiology, or retraining program. Once the preceptorship, mini-residency in radiology, or retraining program has been satisfactorily completed, Dr. Kabnick would continue on probation under the Terms of Probation attached hereto as Exhibit A. We further recommend that, upon satisfactory completion of the probationary period, his license be fully restored.

Leslie Templeman
Steven Earle
Joseph Frey

EXHIBIT "A"

TERMS OF PROBATION
OF THE COMMITTEE ON THE PROFESSIONS

EARL M. KABNICK

1. That the applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing the applicant's profession;
2. That the applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Suite 303, 4th Floor, Hedley Park Place, 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in the applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That the applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that the applicant has paid all registration fees due and owing to the NYSED and the applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by the applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That the applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) the applicant is currently registered with the NYSED, unless the applicant submits written proof that the applicant has advised DPLS, NYSED, that the applicant is not engaging in the practice of the applicant's profession in the State of New York and does not desire to register, and that 2) the applicant has paid any fines which may have previously been imposed upon the applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That the applicant shall successfully complete a preceptorship, mini-residency in radiology, or retraining program approved by the Director, OPMC;
6. That the applicant shall be responsible for any expenses related to the preceptorship, mini-residency in radiology, or retraining program and shall provide to the Director, OPMC, proof of full payment of all costs that may be charged. If any such expenses are charged, this term of probation shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy this term of probation shall provide a basis for a violation of probation proceeding;
7. That the applicant, at the conclusion of the approved preceptorship, mini-residency in radiology, or retraining program, shall submit to the Director, OPMC, a detailed

assessment of the applicant's success in completing such preceptorship, mini-residency in radiology, or retraining program;

8. That the applicant shall practice medicine only within the parameters established for the preceptorship, mini-residency in radiology, or retraining program until the Director, OPMC, has determined that the applicant has satisfactorily completed the preceptorship, mini-residency in radiology, or retraining program;
9. That the applicant, once the retraining program has been satisfactorily completed, shall practice medicine only in an Article 28 facility as defined by the Public Health Law of the State of New York or in a group setting previously approved in writing by the Director, OPMC;
10. That the applicant shall only practice as a physician in a supervised setting, under the supervision of a board certified physician in the type of medicine that the applicant is practicing, said supervising physician to be selected by the applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct and said supervising physician to submit quarterly reports concerning the applicant's practice and such other information as may be specified by the Director, OPMC;
11. That the applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring the applicant's terms of probation to assure compliance therewith, and the applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
12. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding; and
13. That the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State. The applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The applicant shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State.

Re: U. 2-13-09

WILFRED T. FRIEDMAN, P.C.

Attorneys and Counselors at Law

60 East 42nd Street

Fortieth Floor

New York, New York 10165

Telephone (212) 302-0100

Facsimile (212) 302-1119

e-mail law4docs@aol.com

website: www.law4docs.com

February 10, 2009

Committee on the Professions
89 Washington Avenue
2nd Floor West Wing
Albany, New York 12234
Attn: Seth Rockmuller, Esq.
Counsel

Re: Matter of Earl Kabnick, MD

Dear Committee Members:

Thank you for the modified recommendations of the Committee on the Professions to the Board of Regents, faxed to me on 5 February, 2009. It is with continued concern to me that the Article 28 facility language remains. Unfortunately, in a case after the Administrative Review Board had completed the appeal and other counsel had unsuccessfully attempted to remove the Article 28 language, I petitioned again but was not successful.

In *Matter of Magda Lee Binion*. Dr. Binion was the anesthesiologist who sedated patients operated upon by Dr. Lauersen, an ob/gyn who was performing non-covered fertility procedures after disguising them as gynecological procedures and billing insurance carriers which were without responsibility for reimbursement.

Both Drs. Lauersen and Binion were convicted in the United States District Court with Lauersen receiving a lengthy prison term and Binion a very short (3 month) period of incarceration with additional house confinement. Binion however was restricted to work in an Article 28 facility.

From 2001 to the present time Dr. Binion, a board certified anesthesiologist without patient issues, has been unable to find work as a physician because of the double whammy of her conviction which prevents her employment by an Article 28 facility while only being permitted to work in such facility.

I respectfully request that the reference to the Article 28 facility be deleted. There is no objection to Dr. Kabnick being required to have a practice monitor who is board certified in his specialty and to be employed in a group radiology practice and not practice as a solo practitioner. There is no objection to his being prohibited access to or responsibility for billing.

The modification requested above will enable Dr. Kabnick to return to practice and earn a living to support himself and his family. He has already lost many years from his practicing life so that any consideration COP is able to give in the recommendation to the Board of Regents will be greatly appreciated.

Respectfully,
Redacted Signature

Wilfred T. Friedman

WTF:aa
cc: Earl Kabnick, MD

wtf/Kabnick/COP 210-09

WILFRED T. FRIEDMAN, P.C.

Attorneys and Counselors at Law

60 East 42nd Street

Fortieth Floor

New York, New York 10165

Telephone (212) 302-0100

Facsimile (212) 302-1119

e-mail law4docs@aol.com

website: www.law4docs.com

January 5, 2009

BY FAX AND OVERNIGHT MAIL

Seth Rockmuller, Esq.
Committee on the Professions
89 Washington Avenue
2nd Floor West Wing
Albany, New York 12234

Re: Earl Kabnick MD
3/8/07 Meeting

Dear Mr. Rockmuller:

I respectfully request that the Committee on the Professions ("COP"), modify the recommendation to the Board of Regents to stay the revocation of Dr. Kabnick's license, by eliminate so much of the Terms of Probation as require practice in an Article 28 facility.

Dr. Kabnick is grateful to COP for the recommendation and has no quarrel except with some much of the Terms of Probation as requires him to practice in an Article 28 facility.

Clearly COP found that Dr. Kabnick was ready to return to practice but with some additional training to insure that his years out of practice will not be a detriment to his patients. The problem, however, with requiring that he practice in an Article 28 facility during his probation is that such facility would be unable to have Dr. Kabnick associated with it. Dr. Kabnick respectfully suggest that COP remove the recommendation of practice in an Article 28 facility and substitute a requirement that Dr. Kabnick be barred from being involve in billing. Such limitation as to billing would not prohibit him from working as a physician but would eliminate any concern regarding his billing.

The Facility Limitation makes it impossible for Dr. Kabnick to practice since, as a radiologist, he is unemployable in his specialty if barred from Medicaid and Medicare. There is no Article 28 facility which will employ Dr. Kabnick based on the proposed Terms of Probation.

I respectfully refer you to Matter of Elliot M. Heller, M.D., Order No. 03-337A and the Special Advisory Bulletin annexed at Dr. Heller's request, makes it clear that a licensed facility which accepts Medicare or Medicaid is unable to employ Dr. Kabnick due to his exclusion from those programs. As stated above, for a radiologist, the inability to work in a facility while being barred from private practice tantamount to being barred completely from practice. Essentially the Facility Limitation in this case of this physician has the same practice effect as if COP had recommended to the Board of Regents that the revocation not be stayed. That was certainly not the intent of the Peer Committee or COP.

Respondent raises no objection to a permanent billing limitation on his license so that he may practice medicine so long as he is not involved in handling the billing for his services.

The modification requested in the recommendation does substantial justice and disciplines Respondent for his misconduct (for which he has already been barred from practicing medicine for some 14 years), but permits him to have the benefit of a restoration which will actually permit him to practice medicine. Failure to remove the Facility Restriction gives this doctor a pyrrhic victory which certainly was not intended.

It is respectfully requested that the recommendation to the Board of Regents by COP be modified so as to delete the Facility Limitation.

Respectfully,

Redacted Signature

W. J. Friedman

WTF: aa
cc: Earl Kabnick, MD



The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE

-----X
In the Matter of the Application of

EARL M. KABNICK

REPORT OF
THE PEER COMMITTEE
CAL. NO. 21851

for the restoration of his license to
practice as a physician in the State
of New York.
-----X

EARL M. KABNICK, hereinafter known as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department on or about October 6, 1978. That license was revoked effective August 11, 1994 by the Office of Professional Medical Conduct (OPMC), New York State Department of Health (DOH), as a result of a professional misconduct proceeding.

The applicant has applied for restoration of his license.

BACKGROUND INFORMATION

The written application, supporting papers provided by the applicant and papers resulting from the investigation conducted

EARL M. KABNICK (21851)

by the Office of Professional Discipline (OPD) have been compiled by the prosecutor from OPD into a packet that has been distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

PRIOR DISCIPLINE PROCEEDINGS

Action by the State Board for Professional Medical Conduct:

OPMC Hearing Committee: On March 14, 1994 the State Board for Professional Medical Conduct of the New York State Department of Health (DOH), by Determination and Order #94-27, voted unanimously to suspend for a period of two (2) years the applicant's license to practice medicine in the State of New York, with one (1) year of such suspension stayed and the applicant fined a sum of \$10,000.

On May 31, 1994 the Administrative Review Board (ARB) of OPMC sustained the Hearing Committee's determination of guilt against the applicant, but voted unanimously to overturn the Hearing Committee's recommended penalties and instead recommended the revocation of his license.

Specifications of misconduct: The applicant was charged and found guilty of professional misconduct by virtue of having committed an act constituting a crime under New York law.

Nature of the misconduct: Pursuant to Indictment #620/91, the applicant entered a guilty plea to Grand Larceny in the Third Degree, a Class D felony. This plea was entered on March 10, 1992 and he was then sentenced on August 28, 1992 to five years

EARL M. KABNICK (21851)

probation, 500 hours of community service and restitution of \$75,000. The applicant's crime involved falsely billing New York's Medicaid program for 9000 Medicaid patient sonograms, knowing that the tests were unnecessary and sometimes fictitious.

APPLICATION FOR RESTORATION

The applicant executed the State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to, below:

Entries in the basic application form:

Continuing Medical Education (CME): The applicant provided documentation that he completed many hundreds of hours of CME coursework in a variety of professional topics.

Professional Rehabilitation Activities: Following his conviction, and continuing to date, the applicant has embarked on a study of ethics. The applicant has studied the Ethics of Our Fathers, a Hebrew text, on a daily basis and Aristotle's Book of Ethics. In addition, he studies the Talmud and, working with a rabbi, studies the Torah as well.

The applicant also supplied information that he has engaged in approximately 50 sessions of billing instruction from Leonard Chumsky of Computer Medical Billing Solutions Ltd. in order to understand the process and to avoid improper billing.

Submissions of Affidavits: In support of his application, the applicant submitted six affidavits, three of which were from

EARL M. KABNICK (21851)

medical colleagues, two from community professionals and one from a clergyman.

INVESTIGATIVE INFORMATION

The packet provided by OPD contains the following additional information from the investigation that resulted from the filing of the application for restoration:

A report dated October 22, 2003 was prepared by the investigator for OPD and summarized her interview with the applicant and her checking of his references, as listed in his petition for restoration.

Additionally, a letter dated February 10, 2004 from Dennis J. Graziano, Director, OPMC, set forth office's position that the applicant "should not regain the privilege of practicing medicine in this State."

PEER COMMITTEE MEETING

On August 9, 2005, this Peer Committee met to consider this matter. The applicant appeared before us personally and was represented by an attorney, Wilfred T. Friedman, Esq.. Also present was Joan E. Handler, an attorney from the Division of Prosecutions, OPD.

At the beginning of the hearing, applicant's counsel offered an affidavit and curriculum vitae (C.V.) from a physician, Michael Conjalka, M.D., who was scheduled to appear as a witness but was unable to do so. The affidavit and C.V. were marked into the record as Applicant's Exhibit "A". Additional evidence of CME

EARL M. KABNICK (21851)

taken by the applicant and which was not previously submitted to the panel was offered and accepted into the record as Applicant's Exhibit "B".

Mr. Friedman gave a brief opening statement in which he asked the committee to listen to the witnesses and to make up its own mind as to what the applicant has learned, whether he has learned and to consider all the other factors that go into the panel's determination as to whether a license should be restored.

Ms. Handler in her opening remarks began with a summary of the circumstances that led to the revocation of the applicant's license. She emphasized that the findings of misconduct made by the DOH went beyond the conviction itself to include other behavior that was necessarily a part of that conviction, such as the improper use and supervision of residents in the scheme to defraud Medicaid. She also stated that OPMC opposes the restoration of the applicant's license, as noted above.

Mr. Friedman began his direct examination of the applicant by asking him about his post-graduate training and employment, including the work and circumstances which led to his revocation of licensure. Between 1975 and 1979 the applicant did a residency at Queens Hospital Center in Queens, New York in radiology. He continued in various positions until his dismissal in 1988, which he believed was the result of acrimonious negotiations between himself and the hospital in his capacity as president of the Medical Staff Association.

EARL M. KABNICK (21851)

At the end of 1987 or in the beginning of 1988 the applicant became involved with reading ultrasounds. A sales representative from a mammography company approached him and asked if he was interested in working for a radiologist who was setting up four imaging centers in the New York area. The applicant thought this would be a good opportunity to accept in light of his situation at the hospital. He wound up accepting a position in which he ran an existing office and was in charge of three other offices; he described the pay offered as "astronomical" compared to his salary at the time. The applicant testified that he made it clear to them that reading ultrasounds was not his practice strength even though that was the area in which his services were needed.

It was not long after he started that the applicant first had a hint that something was wrong. He described how he received cases with the same images but under different patient names and how he questioned the billing office about this.

The applicant gave an analogy of what he refers to as the "smell test". He explained that his mother would take food out of the refrigerator and smell it for freshness. If it did not pass her smell test then she would throw it away. It was the episode described above by the applicant regarding the ultrasounds, and other ones, that he ignored in the sense that they did not pass his "smell test", and yet he did nothing at the time. Later he did in fact confront them about duplicate readings.

EARL M. KABNICK (21851)

In June of 1988 the applicant received a call from the billing department informing that billing under his Medicaid name and number had been suspended. The applicant questioned why this happened and was told that because the other doctor in the business had a problem with Medicaid, all the billing had been shifted to him, of which he was unaware. He was called into Medicaid for an audit and asked to provide documents to them. When it was shown to him that repeat studies on the same patients had been done, the applicant said at that moment he felt sick. He concluded that the patients were going to clinics multiple times or that they were running multiple copies of the same study. The applicant asked why the computer system in his office had not kicked out these duplicate studies and was told that this practice was stopped by Dr. S., who was the radiologist who had hired the applicant (and who later also had his medical license revoked for his participation in this scheme).

The applicant explained that he answered all of Medicaid's questions truthfully and that he cooperated so fully with prosecutors that they furnished him with a letter setting forth his cooperation to present to the Department of Health, saying that his assistance was crucial for the successful prosecution of the aforementioned Dr. S.*

* This letter, dated October 14, 1993, was a part of the applicant's restoration packet and was signed by Sarah E. Everett, Special Assistant Attorney General of the Office of the Special Prosecutor for Medicaid Fraud Control.

EARL M. KABNICK (21851)

The applicant was asked about what has transpired in his life from the time of licensure revocation to the present. The applicant talked about how he was full of hatred and rage at everybody but the right person, namely himself, during the period from 1990 to 1996. Beginning in 1996 the applicant developed some severe medical problems, including renal cell cancer, diabetes and hypertension. He also developed a blood clot in his left eye which impaired his vision to a great degree and required five surgeries. These medical problems resulted in a personal revelation of sorts. The applicant said to himself, "Earl, I don't know what it is you have done but you better straighten out your life". It was at this time that the applicant decided that he wanted to become the best Jewish person that he could.

The applicant stated that his religious awakening has taken place over a long period of time. It was the applicant's wife who decided that they needed to join a synagogue, and they were introduced to their current congregation through a neighbor. Over time the applicant came to study with a rabbi and, while he does not consider himself Orthodox, his religious beliefs strengthen daily.

Mr. Friedman asked the applicant to explain to the committee how they could be assured that he wouldn't fall prey to this type of criminal act in the future. In considering the time that he has had to reflect, he noted that although he pleaded guilty, in his heart he could not accept that he had done anything wrong. It

EARL M. KABNICK (21851)

was not until 2000 that the applicant finally came to the realization that he really did commit these illegal acts and that he couldn't hide behind his denials anymore. The applicant stated that once you get over that hurdle and accept responsibility for your actions, then you can go on. He could not give a 100% guarantee that he will not fail again but what he has done recently in his life should be a good indication of his rehabilitation.

In 2003 the applicant lost the radiology office that he had owned since 1989 to creditors. The office was doing poorly financially and he turned down what he called "many opportunities" to buy and sell patients from different doctors. He explained that there is a practice prevalent in the radiology field today in which brokers sell patients to doctors for a fee. When the applicant became aware that this was being proposed to his office, he brought the information to the attention of the FBI.

In January of 2003 four men purchased the office and the applicant was asked to stay on as an administrator. He agreed to stay on if the office was run to the highest ethical standards and would not participate in the buying or selling of patients. In March of 2005 the applicant saw the name of a doctor who had previously offered to sell patients on a list in his office. After a meeting with his staff was called, the applicant determined that the situation did not pass the "smell test" and, instead of ignoring the potential problem, walked away from the

EARL M. KABNICK (21851)

business. This left him unemployed but with his integrity.

Mr. Friedman then asked the applicant to explain about the court-mandated fine, restitution and community service he completed. The applicant testified that he made full restitution by paying the \$75,000 required and completed 500 hours of community service at the New Rochelle Men's Shelter. The applicant cooked, cleaned, washed sheets and helped with recreational activities over the six to seven month period he worked there.

Ms. Handler began her cross-examination by asking the applicant questions relating to the repeat radiology studies that brought suspicion upon him. The applicant stated that his organization read a huge number of ultrasounds per week and that given the odds, from time to time there would be repeat examinations. This may be due to incomplete studies of an organ, such as a partial view of a pancreas, or where additional views are required. There may also be cases where there was a specific request for a follow-up or another view. Although he had his suspicions about the way things were operating and had closed-door meetings in which he confronted the others in the office, he admitted that he took no action and continued his work as usual.

The applicant testified that there were residents working at the radiology group whom he supervised in their reading of ultrasounds. The applicant explained that he reread all the ultrasounds that the interns did, which amounted to approximately

EARL M. KABNICK (21851)

100 to 150 per day. He also stated that his use of these interns was in no way secretive or hidden. The applicant said that he had told the Medicaid office back in 1988 that he was using interns to read reports; he further commented on OPMC's findings that he had abused his role as an attending radiologist in using these residents by stating that the residents were already moonlighting in different positions and were in fact licensed physicians.

Ms. Handler then pointed out to the applicant statements he made to the OPD investigator as compared to a statement he made in court when pleading guilty in 1992. In speaking with the investigator, the applicant said that he had turned a blind eye to what he discovered was occurring at the radiology practice. In contrast, the applicant told the judge in his criminal trial that he in fact did know what was going on at the practice and that it was his intention to steal money.

The applicant was asked about his activities since 2003, when his own office was sold. He replied that he stayed on as an administrator at that office and did so until March of 2005. Following that he went to work for Aviva Williamsbridge Open MRI in the Bronx, New York as an administrator only, with no medical duties such as reading ultrasounds being performed by him.

The applicant related to Ms. Handler what community-oriented activities he has engaged in since revocation. He is on the Board of Trustees at his synagogue and has recently joined a local Meals on Wheels program. He is also in the process of becoming a

EARL M. KABNICK (21851)

representative for the Interfaith Council in New Rochelle.

Additionally, he has over the past several years collected clothes for different organizations. The applicant explained that if someone passes away in the congregation, he would contact the family of the deceased after some time to see if they would donate clothing to one of the applicant's charitable organizations.

Ms. Handler ended her cross-examination by asking the applicant to demonstrate that he has been rehabilitated. The applicant pointed out that he would still have his office today if he had succumbed to the offer to broker patients. Further, in his current role as an administrator, billing is checked and rechecked by two different sources to make sure it is done correctly and no audits have found any improper billing.

The panel began its questioning of the applicant by asking about his duties at Aviva Williamsbridge Open MRI. He said that he set up a quality assurance program, as mandated by New York State, hired a radiologist to be on duty for at least six hours per day and was also given the job of purchasing and testing of a new MRI machine for the office. The applicant said that he is not directly involved at all with any of the billing but does know who the billers are. He wanted to make clear to the panel that even though he lost his license to practice medicine, it was perfectly lawful of him to own a radiology office and that the radiologists who work there rent office space, have independent contracts and are responsible for their technicians and any other professional areas.

EARL M. KABNICK (21851)

When asked what he would do if his license were to be restored, the applicant responded that he has not let his mind wander that far yet. He explained that there have been too many highs and lows and that he is just trying to keep an even keel. He acknowledged that it will be difficult to find gainful and meaningful employment but supposed he would do something relating to mammography. He would also consider trying to find a position with Fox Army Hospital, where he worked previously.

The applicant was asked how he could become competent again in reading films since he has not done so in a number of years. He made it clear that there were definite areas he would stay away from because of a lack of knowledge and experience with the new technology. However, since he is good at reading mammograms he would focus on that area. In any event he would certainly read with another radiologist and have another radiologist give a second reading of his films if he is allowed to return to practice.

The applicant was asked if in retrospect he feels that he should have done anything differently about his relationship with Dr. S. He adamantly stated that he absolutely should have done things differently and, had he done so, would not be in the position he is in today. He acknowledged that he had made a terrible decision by working with Dr. S.

The applicant was asked about his health and CME credits. He responded that he has lost a fair amount of weight, is no longer

EARL M. KABNICK (21851)

diabetic or hypertensive, but is missing his left kidney and has recently found out that his bowel is herniated.

The applicant was asked about the ratio of radiology coursework taken versus other areas of medicine. The applicant acknowledged that the bulk of his CME, all of which was taken online, was in radiology, but that he did complete a lot of credits in general medicine and some in geriatric medicine.

When asked about his rehabilitation, the applicant said that in addition to studying the Torah with his rabbi, he sought the services of a psychiatrist for a brief period of time, although he has no records of this treatment.

Lastly, the applicant was asked how he was unaware that bills were being submitted under his provider number in furtherance of the Medicaid fraud. The applicant stated that he had no idea at the time how Medicaid billing procedures worked and that they were probably billing under his number at the hospital where he was employed as well. The applicant said that this was a terrible way to learn a lesson, but now he is actively involved in the oversight of these processes and understands the tremendous responsibility associated with it.

A number of witnesses then appeared on the applicant's behalf.

The first to testify was Rabbi Ely Rosenzweig. The rabbi began by stating that he has a congregation in New Rochelle, New York, where he has served for nine years. He has known the

EARL M. KABNICK (21851)

applicant and his family for almost this entire period of time through their membership in the congregation. The rabbi described the applicant's synagogue membership as being extremely active in many ways, including attendance at worship, serving on the Board of Trustees and volunteering at its functions.

With regard to the applicant's remorse and rehabilitation, the rabbi has seen him evolve tremendously. Clearly, he sees the humiliation and shame that the applicant has experienced and the sense that he has dishonored his parents, wife and children. He went on to say that over time the applicant has come to reckon with what he's done and takes full responsibility for his actions. The congregation has a great deal of respect for him and the rabbi said that he would trust his life to the applicant. He is as confident as one can be that the applicant would not repeat his previous mistakes.

The panel inquired of the witness if the applicant was the type of person who would have the type of courage to take action in a situation where he perceived something evil, or rather is someone who would say that he wouldn't want to get involved. Rabbi Rosenzweig felt that the applicant would definitely have the courage to take action in this type of situation. He gave an example of a time when the synagogue held a raffle and some of the funds from the raffle got diverted by an individual associated with it. The applicant spoke up and made a tremendous fuss to rectify the potential wrong.

EARL M. KABNICK (21851)

The second witness to appear on the applicant's behalf was Elliott Kracko, who testified that he has known the applicant for approximately 9 years. He met the applicant on an airplane and discovered they had much in common, including their town of residence. Mr. Kracko wound up introducing the applicant to his current synagogue, where the witness reiterated the rabbi's assertion that the applicant is an active participant. He added that the applicant's reputation at the synagogue for honesty is well-known and that he is very well-liked.

The applicant has been open with him about the circumstances that led to the revocation of his license. Mr. Kracko is of the opinion that the applicant is extremely remorseful for what he did. He feels that the applicant knows that what he did was wrong, is paying the price and is trying hard to make up for it. He believes that if given the opportunity the applicant will never again repeat any of the acts which led to his previous problems.

When asked what would prevent the applicant from getting involved in another illegal, immoral or unethical situation, Mr. Kracko testified that he felt the applicant is much smarter and more careful and would never turn the other cheek if he were aware of a problem or wrong.

The next witness was Ronald Patell, who is a relative of the applicant and has known him for 17 years. Mr. Patell is currently employed with the Nevada Gaming Control Board and was previously employed with the United States Secret Service for over 21 years.

EARL M. KABNICK (21851)

Mr. Patell testified that the applicant discussed his criminal conviction and related problems with him. He spoke of the applicant's warmth and compassion, telling of how on many holidays and family functions the applicant had invited both poor and homeless families in for meals and celebrations. Through his years of working in law enforcement, Mr. Patell has learned that "very often good people make bad decisions" and has no doubt that the applicant would not steal, mislead or take advantage of a situation again.

Dr. Michael Kirsch next appeared on behalf of the applicant. Dr. Kirsch is a high school principal and has a doctorate in education. He has known the applicant for approximately 57 years and he sees the applicant about once a month and speak more frequently. Dr. Kirsch is aware of the problems that led to the applicant's license revocation and believes that the applicant is remorseful for his actions and has accepted responsibility for them. While it was very difficult for the applicant to talk openly in the beginning, he has since seen a tremendous transformation in the applicant, due in part to his religious devotion. When asked whether the people of the State of New York need to be protected in any way from the applicant, the witness adamantly said no.

The next witness was Dr. Hal Gutstein, a neurologist who has known the applicant since 1988. Dr. Gutstein used to refer patients to the applicant for evaluation based on recommendations

EARL M. KABNICK (21851)

from other doctors and because his name kept coming up as having a good reputation in the field of radiology. Dr. Gutstein was aware of the applicant's legal problems and believes that the applicant has accepted responsibility for his actions and is truly remorseful.

When asked whether or not he felt the applicant would repeat these mistakes in the future, Dr. Gutstein replied with a reasonable degree of certainty that he would not.

The witness was asked if a) he would again refer cases to the applicant if his license were to be restored, and b) how he would assess the applicant's current competence after such a lengthy lapse in practice. He responded that he would want some assurance that the applicant's current competence is equal or superior to that in the past and, if so satisfied, would be willing to refer cases to him.

The final character witness was Dr. Michael Tafreshi, who testified that he has known the applicant since approximately 1975. The witness was then an associate director of the Queens Hospital radiology department and the applicant was a resident at that time. The applicant was hired as an assistant attending after he finished his residency and did mostly regular x-ray readings and also became expert in mammography. Dr. Tafreshi also stated that the applicant had a reputation for honesty and integrity, which was why he was made president of the medical association of doctors at the hospital. Dr. Tafreshi was aware

EARL M. KABNICK (21851)

that the applicant was moonlighting and reading ultrasound studies, and other doctors who were also reading studies were using the applicant's medical number. He also stated that the applicant had told him that there was little to no financial gain from reading these studies since many doctors were reading and the fees were split amongst all of them.

In regard to the applicant's remorse and acceptance of responsibility, Dr. Tafreshi feels that the applicant is remorseful and has accepted responsibility for his actions. The doctor does not believe the applicant will ever become involved in any illegal activity again.

Ms. Handler on cross-examination asked Dr. Tafreshi to clarify her understanding of how and why the applicant's Medicaid number was used. Dr. Tafreshi stated that you must be a physician to read something and charge it to Medicare or Medicaid. In addition, he stated that the practice was using the applicant's number for billing.

The Department's attorney, in her closing remarks, delineated the three areas which the panel must consider in reviewing an application for restoration: remorse, rehabilitation and re-education.

With regard to remorse, Ms. Handler feels that there is no doubt that the applicant is contrite, but does ask the panel to examine the other criteria carefully.

EARL M. KABNICK (21851)

With respect to the applicant's re-education, the Department is concerned that he was not able to adequately assimilate all the information contained in the CME he took, given that many hundreds of hours were taken in a compressed period of time.

Finally, Ms. Handler stated that the applicant's rehabilitation is an area that is hard to evaluate. In discussing the applicant's religious observance, she noted that such observance is not necessarily tantamount to ethical behavior. She also noted that witnesses either stated or implied that the applicant has always had a reputation for honesty and integrity and yet the applicant became involved in illegal and unethical behavior during the time he held this reputation.

Continuing to discuss the applicant's rehabilitation, Ms. Handler then referred to what she saw as the conflicting statements that the applicant made to the court in his criminal proceeding versus the statements made to the OPD investigator. When he entered his guilty plea he told the judge that he knowingly and intentionally became involved in the Medicaid fraud. Yet, when interviewed by the OPD investigator, he explained that his error was in "putting his head in the sand". Additionally, when referring to the "smell test", the applicant recognized that he should have done something about the malfeasance occurring with the radiology films while he was involved, had access to a relative involved in law enforcement, and yet did nothing about it.

EARL M. KABNICK (21851)

Although OPD did not take a position on the applicant's petition, Ms. Handler noted that OPMC opposes the restoration of the applicant's license to practice medicine.

Mr. Friedman, in his closing remarks on behalf of the applicant, acknowledges that the applicant made a mistake and committed a criminal act. But, he asks, how do you teach someone not to be a thief? You can teach someone how to prescribe ethically and you can teach boundaries, but how do you teach morals? He reminded the committee that the rabbi who testified is not some individual off the street but a spiritual leader who is accomplished and a regular part of the applicant's life.

Mr. Friedman believes that the applicant has shown remorse through his dedication to religious study and observance and an acknowledgment of his mistakes.

In terms of rehabilitation, Mr. Friedman cannot and would not swear that the applicant would not act inappropriately again, but based upon what he has gone through, what he has lost and what it has taken to get to this point, he is confident that the applicant is dedicated to rebuilding his reputation. This was an honest man who made a misstep, has more than learned his lesson and who now deserves an opportunity to practice his profession again.

RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received before and during our meeting. In arriving at our recommendation, we note that, in a licensure

EARL M. KABNICK (21851)

restoration proceeding, the burden is on the applicant to demonstrate that which would compel the return of the license. Greenberg v. Board of Regents of University of New York, 176 A.D. 2d, 1168, 575 N.Y.S. 2d 608, 609. In reaching our recommendation, we consider whether the applicant demonstrates sufficient remorse, rehabilitation and re-education. However, we are not necessarily limited to such formulaic criteria but may consider other factors, including the seriousness of the original offense and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

The applicant throughout his testimony spoke of the shame and humiliation that he caused his family, his patients, his community and himself and we believe that he has come to terms with the circumstances that led to his difficulties. Through his own undertaking, the applicant has sought the help of a rabbi, a religious community and his own faith to get him to the point where he not only accepts responsibility for his actions but now can be truly remorseful for those actions.

With respect to re-education, the applicant's efforts appear somewhat insufficient to this committee. While the applicant has submitted many documents showing coursework and certificates for CME, we question the short time frame in which the coursework was completed and recommend additional coursework as noted later in our report. We are concerned that the applicant has not participated in grand rounds, among other activities, since his

EARL M. KARNICK (21851)

license revocation and recommend that the applicant complete a preceptorship, retraining program or mini-residency in radiology prior to the resumption of his medical practice.

The third component that we consider, rehabilitation, entails not only an understanding and acceptance of past mistakes, but also obtaining the knowledge and experience to avoid similar mistakes in the future. We believe that the applicant has and will be successful in this regard. To a certain degree we see the applicant as someone who got himself involved in a situation which got out of hand before he knew what was happening. While it is apparent that something should have been done by the applicant immediately upon his knowledge of what was occurring in his office, we believe he did not truly have an understanding of the ramifications of his actions. We believe that the applicant will be more careful in the future in his practice to ensure that this type of lapse does not occur again. With continued support and guidance as he re-enters the medical profession, we feel that he can be an asset to that community again.

Further, in terms of rehabilitation, the applicant's witnesses were effective testaments to his evolution towards accepting responsibility for his actions.

Therefore, for all of the reasons cited above, it is our unanimous recommendation that the applicant's petition for restoration of his license to practice medicine in the State of New York be granted and that the applicant then be placed on

EARL M. KABNICK (21851)

probation for a period of five years under the terms and conditions of probation annexed hereto, made a part hereof and marked as Exhibit "A". Said period of probation shall begin upon the applicant's successful completion of a preceptorship, retraining program or mini-residency in radiology, with said coursework to have the prior written approval of the chairperson of this peer committee. In the event that the chairperson is not available, then said coursework must have the prior written approval of the Executive Secretary of the State Board for Medicine.

The applicant's return to practice on probation is subject to various conditions, including among other things, that he not engage in private practice and that said practice be limited to Article 28 facilities as defined by the Public Health Law of the State of New York.

Respectfully submitted,

Patrick Carone, M.D., Chairperson

Paul A. Gitman, M.D.

Delores Riggins, Public Member

Redacted Signature

~~Chairperson~~

July 1, 2006
Date

EXHIBIT "A"

TERMS OF PROBATION
OF THE PEER COMMITTEE

EARL M. KABNICK

CALENDAR NO. 21851

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, of any employment and/or practice, applicant's residence, telephone number, or mailing address, and of any change in applicant's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That applicant shall only practice as a physician in the field of radiology in a supervised setting, under the supervision of a physician board certified in radiology, said supervising physician to be selected by applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;

EARL M. KABNICK (21851)

6. That applicant shall not engage in the private practice of medicine;
7. That applicant shall only practice in an Article 28 facility as defined by the Public Health Law of the State of New York;
8. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
9. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.